EX PARTE OR LATE FILED

September 29, 1994

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: PP Docket No. 93-252 Ex Parte Presentation
PP Docket No. 93-253

Dear Mr. Caton:

Pursuant to Section 1,1206(a) of the Commission's Rules, GO Communications Corporation hereby files the attached written ex parte communication. Two copies of this ex parte communication have been submitted to the Secretary.

Please direct any inquiries concerning this matter to the undersigned.

Respectfully submitted,

GO COMMUNICATIONS CORPORATION

By: _____
John A. Malloy

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September 29, 1994

William E. Kinnard, Esq.
General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20544

Subject: Permissible Management Contracts for Broadband PCS

Dear Mr. Kinnard:

As the record demonstrates in PP Docket No. 93-253 and GN Docket No. 93-252, participants in the FCC auction for broadband PCS Blocks C and F need clarity prior to short form applications regarding the definition of permissible management contracts. Specifically, clarification is needed to determine when a management contract would conform to the Commission's statement in the Fifth Report and Order that: "[s]o long as the applicant remains under the de jure and de facto control of the control group, we shall not bar passive investors from entering into management agreements with applicant."

Based on our experience over the last several months, it seems clear that the major cellular providers or their affiliates are attempting to undermine the practical control and economic interest that designated are intended to have in broadband PCS Blocks C and F. The following is indicative of the inquiries or proposals that we have received:

1. A large telecommunications conglomerate proposed to own and operate all of the equipment in the entrepreneurial blocks and use an affiliated third party to market the services on behalf of the designated entity.

2. Another telecommunications giant has offered to: a) build an advanced-technology full-service telecommunications network and information systems solution, and b) develop an organization to operate the network, market related products/services, and manage the daily business.

3. The telco subsidiary of a Regional Bell Operating Company inquired as to whether we would accept up-front money for the auctions in exchange for an exclusive 10-year lease on 10 MHz of spectrum within territory. The reason given for this offer was that its cellular affiliate would also be bidding for blocks D and E within territory.

We were also informed by another designated entity that a large cellular company is planning to invest in designated entities out of region, use management contracts to control the ventures, and buy the systems after the 5 year anti-trafficking period using a right of first refusal.

At the outset, we note that the Omnibus Budget Reconciliation Act of 1993 is quite clear in directing the Commission to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the ***provision*** of spectrum-based services" (emphasis added). This language requires not only the holding of a license, but the actual provision of service to the public by the designated entity.

Likewise, the Budget Act requires the Commission "to prevent unjust enrichment as a result of the methods employed to issue licenses and permits." This requirement is a two-way street. Designated entities should not be allowed to "flip" licenses, and, conversely, the large telecommunications giants should not be allowed to pervade the entrepreneurial blocks and siphon economic benefits intended for bona fide designated entities. Congress' primary purpose in enacting the auction legislation was to "promote economic opportunity and competition." The proposals by the dominant telecommunications providers listed above would clearly undermine those policies.

Also, it would appear that these type of proposals are but the tip of the iceberg. Knowledgeable players understand that broadband PCS has the potential to reorder the communications industry. The Commission's historic decision to create entrepreneurial blocks for new entrants threatens the status quo for existing communications companies and countless efforts will be launched to preserve current economic power. Unless the Commission expressly defines permissible management contracts for broadband PCS, existing communications companies will exploit the needs of new entrants, particularly those of designated entities, to circumvent the rules.

Existing precedent is both unclear and inadequate to prevent the likely deluge of abuse. In the context of SMR, the licensee could contract away system management but had to retain a bona fide proprietary interest. See, e.g., Applications of Motorola Inc. (July 30, 1985). The precedent of Intermountain Microwave permits the leasing of facilities so long as other indicia of control was demonstrated. Intermountain Microwave, 2 Rad.

Reg. (P&F) 983 (1963). However, the application of those Intermountain Microwave factors of control has been unsettled at best. See, e.g., Telephone and Data Systems, Inc. v. FCC, 19 F.3d 42 (D.C. Cir. 1994); Telephone and Data Systems, Inc. v. FCC, 19 F.3d 655 (D.C. Cir. 1994).

GO Communications Corporation (formerly Columbia PCS, Inc.) has taken the position in the above referenced dockets that the Commission must more clearly define permissible management contracts prior to short form applications for Blocks C and F. While we have proffered a bright line test for management contracts based upon the requirement that "general management or general contractor" responsibilities rest exclusively with the designated entity, the issue is clearly broader given the multitude of scenarios under negotiation by the dominant telecommunications providers.

Therefore, in Broadband PCS, we believe the Commission should:

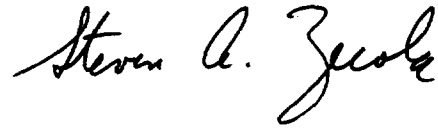
1. prohibit passive investors from owning the network equipment of the licensee;
2. prohibit passive investors from overall system management and limit any management contracts with passive investors to a subcontractor role for one or two discrete functions;
3. prohibit licensees from outsourcing management functions and at the same time outsourcing all equipment ownership to any third party leasing entity; and
4. continue its policy of treating all ownership interests on a fully-diluted basis, including treating rights of first refusal to purchase ownership shares at a point in the future as presently execisable.

These provisions would:

1. eliminate the ability of passive investors to own the bulk of the capital structure of the Block C and F licenses through lease arrangements;
2. minimize the ability of passive investors to control designated entities through management contracts;
3. put the onus on Block C and F licensees to step up to either management of the operations or ownership of the equipment; and
4. curb the ability of passive investors to siphon off the value of the operations by extracting onerous exit provisions from aspiring licensees.

We look forward to further clarification from the Commission on these crucial policy issues.

Sincerely,



Steven A. Zecola
President/CEO
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